United Nations A/70/266

General Assembly

Distr.: General
4 August 2015

Original: English

Seventieth session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Rights to freedom of peaceful assembly and of association

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, submitted in accordance with Human Rights Council resolution 24/5.

* A/70/150.

15-12556 (E) 250815

Please recycle

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Summary

The present report is a comparative study of enabling environments for associations and businesses. The Special Rapporteur asserts that businesses generally operate in better environments, largely because States, multilateral organizations and other key actors make great efforts to create such environments, whereas those actors often make comparatively little effort to improve the environment for associations. The Special Rapporteur concludes that in most cases, States and other actors would better promote and protect the rights to freedom of peaceful assembly and of association if they elevated their treatment of associations to the same level as their treatment of businesses.

Contents

		Page
I.	Introduction	4
II.	Conceptual and legal framework	5
	A. Scope and purpose	5
	B. Sectoral equity: "equitable" not "identical"	6
	C. Methodology	7
III.	Entry procedures and dissolution processes	8
	A. Registration	8
	B. Deregistration and dissolution	10
IV.	Freedom to conduct activities	11
	A. Government interference and limits on scope of work	11
	B. Political activity and contributions	13
	C. Audit and reporting requirements	13
	D. Other oversight and control	15
V.	Freedom to solicit, receive and utilize resources	17
	A. Restrictions on the ability to solicit, receive and utilize resources	17
	B. Counter-terrorism and anti-money-laundering measures	19
	C. Facilitation of each sector's ability to solicit, receive and utilize resources	19
VI.	Influence with power	21
VII.	Conducting peaceful assemblies	23
VIII.	Conclusions and recommendations	25

I. Introduction

1. The present report is the third report submitted to the General Assembly by the Special Rapporteur pursuant to Human Rights Council resolution 24/5.

2. In the present report, the Special Rapporteur compares the enabling environments that States, multilateral organizations and other actors create for businesses and associations, and highlights instances where they are treated inequitably. Although businesses and associations are distinct bodies that pursue different objectives, they share similarities, most notably that both are non-State actors and vehicles to unite people to pursue a particular goal, whether economic, political, social, cultural or other.

3. Despite those similarities, the Special Rapporteur has found that States and others often impose more burdensome regulation upon associations, both in law and in practice, with businesses receiving more favourable treatment. The net result is that for businesses the enabling environment — defined broadly as action or inaction by States and other actors to promote a particular non-State sector — is typically much better than it is for associations.

4. The Special Rapporteur approaches those differences mindful that States not only have an obligation under international law to protect the rights to freedom of peaceful assembly and of association; they also have an obligation to promote those rights. He views this obligation as including a duty to create the best possible enabling environment for the existence and operation of associations. He concludes that in many cases States could meet this obligation by treating associations and businesses in a more equitable manner.

5. In preparing the report, the Special Rapporteur benefited greatly from participating in two expert meetings on these issues, in Bangkok on 17 and 18 December 2014 and in Stockholm on 13 and 14 May 2015. He thanks all those who were involved in organizing the meetings and those who shared their experience at the meetings and/or through other means, including in response to his questionnaire.[1]

6. The Special Rapporteur also benefited immensely from the generous pro bono work of the American Bar Association's Center for Human Rights, which coordinated and conducted background research by law firms and lawyers on laws concerning the treatment of businesses and associations in a number of Member States.

7. The Special Rapporteur, in addition, took into account relevant elements of material available within the United Nations system.[2]

---

[1] Thirteen States and 12 associations responded to the questionnaire. The responses are available, in the language in which they were submitted, from www.ohchr.org/EN/Issues/Assembly/Association/Pages/AnnualReports.aspx.

[2] Some country situations mentioned in the present report have been the subject of communications sent to governments, as well as press releases and reports issued by special procedures mandate holders and high-level United Nations officials.

II. Conceptual and legal framework

A. Scope and purpose

8. At first glance, businesses and associations may seem strange bedfellows for comparison. They are both non-State actors but, in the mind of the public and policymakers, the two entities appear to warrant different rules and treatment. The basis for such treatment boils down to one dividing point: one exists to make a profit; the other is a non-profit body.[3]

9. But beyond their dissimilar profit motives, the two sectors share a broad range of similarities. Both are vehicles for the association of multiple people, employers and providers of goods and services, and are magnets for investment, and possible platforms for mobilizing people and influencing policies. Both are crucial to economic and political development; and both have potential to enhance the protection and promotion of human rights.

10. Nonetheless, the Special Rapporteur has observed that many governments make greater efforts to help the business sector grow and succeed. A comparison with how governments treat associations makes the business sector's privileged status even more marked: non-profit associations' registration hurdles are often more burdensome; their ability to access resources is frequently limited and their operations may be more closely monitored by the authorities. The important question is why, as the answer has significant implications for the realization of the rights to freedom of peaceful assembly and of association.

11. The Special Rapporteur approaches this subject mindful that there is almost unquantifiable diversity among both businesses and associations. Business entities range from those with sole proprietors to massive multinational corporations with budgets that exceed those of some States. Associations, for their part, can range from large international non-governmental organizations (NGOs) to local unregistered grass-roots groups to neighbourhood football clubs. Business entities may also form non-profit associations and civil society organizations may operate business like enterprises. States often take a variety of approaches in regulating non-State legal entities, depending on such considerations as their size, purpose and geographic scope.

12. It is also important to note that the motivation for differential treatment can, in some circumstances, relate more to an entity's activities than its status as a for-profit or non-profit body. For-profit media companies, for example, are often targeted[4] for particularly strict regulation. A large international non-profit humanitarian organization, on the other hand, might receive more favourable treatment than a local human rights NGO. Restrictions often boil down to an entity's

[3] For the purposes of the present report, the Special Rapporteur adopts the definition of "association" contained in the Joint Guidelines on Freedom of Association adopted by the Venice Commission and the Organization for Security and Cooperation in Europe in December 2014: "an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure" (CDL-AD(2014)046, para. 7, available from www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e).

[4] www.doingbusiness.ru/?option=com_k2&view=item&id=202:restriction-on-foreign-investors-activities&Itemid=404.

perceived threats and benefits to power, though the Special Rapporteur has found in general that associations are more likely to face systematic restrictions than businesses in most States.

13. The present report does not provide a comprehensive comparison of every issue facing all types of entities within each sector. Rather, it highlights illustrative examples where businesses are treated more favourably than associations without there being an objective reason for such treatment. The Special Rapporteur believes that these examples show that States can indeed provide space for a particular sector to grow if they wish; it is simply a matter of priorities.

14. In line with his mandate, in the present report the Special Rapporteur focuses primarily on situations where the enabling environments are better for businesses than for associations, also referred to herein as "civil society". His objective is to illustrate that States can create an enabling environment for civil society in the same way they do for business.

B. Sectoral equity: "equitable" not "identical"

15. Businesses have been chosen as a point of comparison for this report because of their similarities to associations as non-State actors and because they frequently occupy a place of privilege. We live in an era where political discourse often revolves around the economy, jobs and growth. Businesses, particularly large corporations, exert enormous power over the economy,[5] and consequently have great influence with political leaders. Large businesses in particular also tend to have greater wealth, which in turn allows them to harness the power of the State, whether through legal means, for example lobbying and donations to political parties, or through corruption.

16. The Special Rapporteur believes it is useful to highlight that privileged situation of businesses in relation to how associations are treated. One reason is that it provides a reference point for what is legally and technically feasible in a particular jurisdiction. If a business can register as a legal entity in a few hours without significant government interference, as in Rwanda,[6] for example, why is the procedure significantly different for associations? A similar approach for associations would yield significant economic, social and political dividends.[7]

17. The Special Rapporteur emphasizes that he does not necessarily advocate "identical" treatment across the board for businesses and associations, as there may be legitimate bases for different treatment in certain cases. He instead argues for "sectoral equity", which is a theme that he has referred to in his previous reports.[8] Equity between sectors implies a fair, transparent and impartial approach in which the regulation of each sector is grounded in domestic and international law, standards and norms. Moreover, it implies regulations which are clearly set forth in law, with minimum discretion given to State officials.

---

[5] The economic impact of global civil society, estimated at US$ 1.1 trillion in 1999, is not negligible. See http://ccss.jhu.edu/wp-content/uploads/downloads/2011/08/Global-Civil-Society-1.pdf. However, that amount represents only about 2.4 per cent of the total global economy. See J. Bradford DeLong, "Estimating world GDP, One Million B.C.-Present".

[6] A/HRC/26/29/Add.2, para. 57.

[7] Ibid., para. 58.

[8] See A/HRC/23/39, para. 24; A/HRC/26/29/Add.2, paras. 56-59.

18. The Special Rapporteur has found that the presence of a robust, vocal and critical civil society sector guarantees, almost without exception, that a State also possesses a good business environment (the converse does not hold: a good business environment does not guarantee a good civil society environment). The rule of law is stronger, transparency is greater and markets are less tainted by corruption. Indeed, the presence of a critical civil society can be viewed as a barometer of a State's confidence and stability — important factors for businesses looking to invest their money.[9]

19. Enhancing the enabling environment for civil society should thus not be seen as a criticism of business. Rather, the Special Rapporteur believes it is a matter of elevating civil society. The interests and opinions of each sector may diverge in many respects, but this is to be expected in pluralistic and democratic societies. The important point is how societies deal with those competing perspectives and make room for them at the table of public discourse. States have an obligation to take positive measures to promote the rights to freedom of peaceful assembly and of association. They would better promote and protect those rights if they elevated their treatment of associations to similar levels as their treatment of businesses.

C. Methodology

20. In the present report the Special Rapporteur examines law and practice in a number of Member States, in five areas which are essential to build an enabling environment for both businesses and associations:

(a) Entry procedures and dissolution processes;

(b) Regulation of operations;

(c) Access to resources;

(d) Political influence and access to power;

(e) Conducting peaceful assemblies.

21. The Special Rapporteur's analysis is based on the premise that States have an obligation under international law to take measures to both protect and promote the rights to freedom of peaceful assembly and of association. Restrictions on these rights must be strictly motivated by the limited concerns which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.[10] As stated by the Human Rights Committee, where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of these rights.[11]

---

[9] www.livemint.com/Opinion/3m6EyCcehT7ksaeeYq47IO/Whats-good-for-companies-is-good-for-NGOs-too.html and *American Business in China*, American Chamber of Commerce, 2011.

[10] International Covenant on Civil and Political Rights, arts. 21 and 22 (2). See also Universal Declaration of Human Rights, art. 29 (2).

[11] Human Rights Committee, General comment No. 31, para. 6.

III. Entry procedures and dissolution processes

22. Inequitability in the treatment of businesses and associations often begins with the regulation of the entities' very ability to exist. In many countries, the differences between registering businesses and associations can be vast and registration can often be more burdensome for the latter. Moreover, those disparities are often mirrored in deregistration procedures, which give States much broader powers to dissolve associations than businesses. The Special Rapporteur finds no compelling reason for this differentiation.

A. Registration

23. As a starting point, the Special Rapporteur underscores that the right to freedom of association equally protects associations that are not registered, which means that associations should never be required to register.[12] Allowing unregistered associations is fundamental to a good enabling environment for civil society. An association is simply a group of like-minded people who come together to pursue a common interest. A democratic State has no inherent interest in regulating this type of private activity in and of itself. Since associations cannot be presumed to be unlawful any more than businesses can,[13] States should use ordinary civil or criminal law to address associational activity unlawful under international law, to the same extent they do for unlawful business activity.

24. Registration should be viewed as a voluntary process that associations engage with in exchange for a benefit, for example obtaining status as a legal entity and qualifying for tax benefits. Often, businesses are in the same situation. Many jurisdictions allow sole proprietorships and partnerships without requiring their incorporation as a separate legal entity. Incorporation simply carries additional benefits, such as allowing the entity to obtain credit or tax incentives, or to open a bank account.

25. Individuals involved in unregistered associations should be free to carry out any activity and should not be subject to criminal sanctions.[14] In this regard, the Special Rapporteur cites as best practice the laws in a number of States, including Australia,[15] France,[16] Indonesia,[17] Namibia,[18] Norway[19] and Switzerland,[20] which explicitly allow for the existence of unregistered associations.

26. The Special Rapporteur considers as best practice registration procedures which are simple, non-onerous or even free of charge and expeditious.[21] Registration should follow a "notification procedure" (rather than a "prior

[12] A/HRC/20/27, para. 56.
[13] A/HRC/23/39, para. 23.
[14] A/HRC/20/27, para. 56.
[15] www.ato.gov.au/Non-profit/Getting-started-for-non-profit-organisations/Choosing-a-legal-structure/.
[16] Article 2 of the Law of Associations of 1901.
[17] Societal Organizations (Organisasi Kemasyarakatan) Law, Law No. 17 of 2013 (Indonesia).
[18] Legal Assistance Centre, Windhoek, 2008, "How to create a non-profit group", available from www.lac.org.na/projects/grap/Pdf/non-profit.pdf.
[19] www.ohchr.org/Documents/Issues/Defenders/Answers/States/Norway.pdf.
[20] Swiss Civil Code, art. 60.
[21] A/HRC/20/27, para. 57; see also Human Rights Council resolution 22/6, para. 8.

authorization procedure"), allowing associations to automatically receive legal personality as soon as they notify the authorities.[22]

27. Registration laws should be non-discriminatory, relevant to legitimate State interests and not place excessive discretion in the hands of the authorities. Best practice dictates that States should not judge the purpose of an association when registering it, so long as it complies with international law.

28. Regrettably, in many jurisdictions, the authorities establish unreasonable requirements for the registration of associations and exercise far more discretion over the registration of associations than that of businesses. In the Cayman Islands, a for-profit entity may register by filing a memorandum of incorporation with the authorities; registration is immediate upon filing.[23] The registration of associations, however, is subject to the full and exclusive discretion of the Governor, with no time limit stipulated for his decision.[24] In Nicaragua, the granting of legal entity status to non-profit organizations requires an act of the National Assembly,[25] while incorporating a business entity is comparatively easy, with no significant State discretion.[26] In Belarus, registration applications filed by associations are considered within one month, extendable for another month. Businesses' registration, on the other hand, is considered complete the moment the application is filed.[27]

29. Often registration procedures are simply more burdensome and bureaucratic for associations. In Egypt, a joint-stock company can be created in approximately 15 days;[28] it can take up to 60 days to register an association, and the process is subject to extensive government discretion.[29]

30. In Ecuador, associations face higher registration fees and capital requirements for their formation (up to five times as high as businesses).[30] The law also requires that association registration filings be overseen or performed by a licensed attorney.[31] No similar requirement is in place for business entities. In Senegal, the registration of business entities takes at most 48 hours and does not require government approval.[32] Associations can be formed after a declaration to that effect has been registered;[33] associations founded by foreign nationals, however, are subject to government authorization.[34] As the Special Rapporteur has previously noted, an individual's citizenship or residence status is not a proper basis for

[22] A/HRC/20/27, paras. 58 and 90.

[23] Companies Law, sects. 26 and 27. The Companies Law is available as Supplement No. 6 published with Extraordinary Gazette No. 82 of 11 October 2013.

[24] Companies Law (2013), sect. 80.

[25] Law No. 147: General Law on Non-profit Legal Entities, arts. 6-8; Fundamental Law No. 606 of the Legislative Power, arts. 152-155.

[26] Nicaragua Commercial Code of 22 March 1869; *Ley General de los Registros Públicos, Ley No. 698, aprobada el 27 de Agosto del 2009, La Gaceta No. 239 del 17 de Diciembre del 2009.*

[27] Response to the Special Rapporteur's questionnaire by Legal Transformation Center (Lawtrend), 2015.

[28] World Bank, "Doing business" report on Egypt.

[29] Law on Non-Governmental Organizations, No. 84 of 2002, art. 6.

[30] Executive Decree No. 16 of 4 June 2013.

[31] Ibid.

[32] Decree No. 2000-562 of 10 July 2000, for the creation of the Investment Promotion and Major Projects Agency.

[33] New Civil and Commercial Obligations Code of Senegal, art. 812.

[34] Ibid., art. 824.

restricting the right to freedom of association (or freedom of peaceful assembly) under international law.[35]

31. The Special Rapporteur also finds it problematic when States require an unreasonably high number of "founders" in order for an association to be formed, particularly when business entities can be formed with fewer people. In Honduras, for example, the law requires only two people for the formation of a business entity, but the founding of an association requires seven board members.[36] Best practice[37] dictates that only two people should be required to form an association, as is the case in Armenia,[38] Estonia[39] and Luxembourg.[40]

32. In Ecuador, Executive Decree No. 16 requires associations to permit membership to everyone with a "legitimate interest" who requests to join,[41] a requirement that the Special Rapporteur has not come across for businesses even in the most restrictive of jurisdictions.

33. Differential treatment can also be seen in comparing how States help facilitate the start-up process in each sector. There has been a recent proliferation of so-called "one-stop shops" for businesses, which streamline the registration and information-gathering process for new enterprises or investors. Examples include Hungary,[42] Jamaica,[43] Kenya,[44] the Republic of Korea[45] and Senegal.[46] There are few similar initiatives to encourage the formation of associations, though the Geneva Welcome Centre's NGO service in Switzerland[47] stands out as a positive exception.

B. Deregistration and dissolution

34. States which impose more onerous registration requirements upon associations also tend to allow for the expeditious dissolution of such organizations compared to businesses. The Special Rapporteur is particularly concerned about this disparity in States where operating an unregistered association is deemed illegal, since deregistration inevitably leads to the closure of the organization and subsequent criminalization of its members.

35. Honduran law, for example, provides that the authorities may order the dissolution of an association when it fails to present an annual report within two years or when an agent of the organization commits a crime.[48] No similar provisions exist for business entities.

---

[35] A/HRC/20/27, para. 54.
[36] *Ley Especial de Fomento de Organizaciones No Gubernamentales de Desarrollo*, No. 32-2011.
[37] OSCE-Venice Commission Joint Guidelines on Freedom of Association, para. 148.
[38] A/HRC/20/27, para. 54.
[39] Ibid.
[40] Alain Steichen, *Précis de droit des sociétés*, 4e, éd.
[41] Art. 9.
[42] www.bbr.hu/whatisbbr/members/itd.
[43] www.jamaicatradeandinvest.org/.
[44] www.nation.co.ke/business/Kenya-Investment-Authority-Permits-Approval/-/996/2528560/-/k3f24hz/-/index.html.
[45] www.investkorea.org/ikwork/iko/eng/main/index.jsp.
[46] http://creationdentreprise.sn/.
[47] www.cagi.ch/en/ngo.php.
[48] *Ley Especial de Fomento de Organizaciones No Gubernamentales de Desarrollo, No. 32-2011.*

36. The Registrar of Societies in Malaysia has absolute discretion to revoke the registration of societies which "in his opinion" are being used for purposes prejudicial to or "incompatible with the interest of the security of Malaysia or any part thereof, public order or morality".[49] The law provides no recourse to the courts.[50] The dissolution of companies may be ordered for similar reasons, but only after the issuance of a court order.[51]

37. Similarly, in Egypt, the Minister of Social Affairs may dissolve an association if, among other things: it acquires or sends funds abroad, violates public order or morals, or affiliates with a foreign organization.[52] The Company Law of Egypt does not provide similar bases for the involuntary dissolution of business entities, nor are certain of the above-listed activities illegal for companies.[53]

38. Involuntary dissolution and suspension are perhaps the most serious sanctions that the authorities can impose on an organization. They should be used only when other, less restrictive measures would be insufficient and should be guided by the principles of proportionality and necessity.[54] Moreover, associations should have the right to appeal decisions regarding suspension or dissolution before an independent and impartial court.

IV. Freedom to conduct activities

39. Associations commonly experience harsher treatment than businesses in the regulation of their operations and activities. Those difficulties, which often violate their right to freely carry out their activities, include stricter limits on the scope, or location, of work; more restrictions on political contributions; more intrusive audit and reporting requirements; and targeted harassment or reprisals.

A. Government interference and limits on scope of work

40. States frequently limit the scope of work of both businesses and associations, but in different ways. Some of those controls are more closely related to legitimate areas of national security or public interest (for example in the United States of America)[55] or the health-care sector (in Nicaragua).[56] Other restrictions may be justified on the basis of national security, but fail to comply with international law under close scrutiny. Rather, they seem designed to closely regulate sectors that may pose a political rather than a security threat.

41. Media and telecommunications entities, whether for-profit or non-profit, frequently face obstacles to their operations. Singapore, despite being one of the

[49] Societies Act 1966, sect. 5 (1).
[50] Ibid., sect. 18.
[51] Companies Act, Part X.
[52] Law on Non-Governmental Organizations, art. 42.
[53] Companies Law, No. 159 of 1981.
[54] A/HRC/20/27, para. 75.
[55] www.cfr.org/foreign-direct-investment/foreign-investment-us-national-security/p31477.
[56] Foreign Investment Promotion Law No. 344, art. 3.

freest business environments in the world, limits foreign involvement in telecommunications and the domestic news media.[57]

42. The obstacles for associations, however, are much greater. Ethiopia prohibits foreign associations from engaging in a vast array of activities, including "the advancement of human and democratic rights".[58] A charity is deemed to be "foreign" if it is based in another country, has non-Ethiopian members or receives more than 10 per cent of its funding from international sources.[59] Ethiopia also prohibits foreign investment in certain commercial sectors, notably banking and the mass media.[60]

43. In Oman, the Ministry of Social Development, which is charged with overseeing the mandatory registration of associations, only registers entities falling into one of four identified thematic categories.[61] Associations outside those thematic areas cannot register, nor can associations whose objectives are deemed "too similar" to an existing association.[62]

44. China[63] and Rwanda[64] require associations to obtain the authorities' written pre-approval of their activities and "letters of collaboration", respectively, before registration. Those provisions function as a permission requirement and are reportedly used to control the scope of the associations' work. Moreover, foreign NGOs in Rwanda face a 20 per cent limit on overhead costs in programmes,[65] a level of government interference that would be unthinkable in the commercial sector.

45. The right to freedom of association serves as a platform for individuals to jointly pursue their interests, independent of government involvement. Associations, as businesses, should be free to determine and operate within their areas of concern without interference from the authorities. This includes working on issues that the authorities do not consider to be priorities. As the Special Rapporteur has noted, the power of innovation is enhanced through openness. A multiplicity of interventions and approaches[66] strengthens the non-profit sector and ultimately makes for a more open, tolerant and stable society.

46. Broad categorical restrictions on associations' geographic scope or types of activity are inherently suspicious.[67] Indeed, they should be viewed as prima facie violations of international law, because pre-emptive and comprehensive bans on certain categories of work do not conform to the limitations set forth in international law.

---

[57] Office of the Commissioner of Charities, Revised Guidelines on Public and Private Funding (February 2014).

[58] Charities and Societies Proclamation, paras. 14 (5) and 14 (2) (j)-(n).

[59] Ibid., paras. 2 (2) and 2 (4).

[60] Regulation 270/2012, sect. 3, para. 1 (a) and (d).

[61] A/HRC/29/25/Add.1, para. 42.

[62] Ibid., para. 43.

[63] Regulations on the Registration and Management of Social Organizations, adopted in 1998.

[64] A/HRC/26/29/Add.2, para. 48.

[65] Ibid., para. 53.

[66] Ibid., para. 69.

[67] Recent allegations of attempts to interfere with the right to associate concern the Lao People's Democratic Republic (A/HRC/30/27, case LAO 1/2015); Rwanda (A/HRC/29/50, case RWA 2/2014) and South Sudan (A/HRC/28/85, case SSD 1/2014).

B. Political activity and contributions

47. The issue of how to regulate organizations' political activity is a sensitive one, on which there is no broad international consensus. Some States prohibit any political activity or contributions to political parties, candidates or causes from so-called "legal persons", while others impose very few limits. The question of which system is better is beyond the scope of the present report, but the Special Rapporteur notes with concern that many States treat businesses and associations very differently in this regard, to the detriment of the latter.

48. Senegal,[68] for example, has no formal legislation regulating political contributions, but expressly prohibits associations — and not businesses — from engaging in any "political activity", unless they are a political party. Ethiopia prohibits "welfare organizations" and NGOs from donating to political parties,[69] but domestic companies are free to donate up to set limits.[70]

49. In Canada,[71] the Income Tax Act limits "political activities" by registered charities, requiring such activities to be "ancillary and incidental" to charitable activities. However, the Canada Revenue Agency has exercised its power under section 149.1(6.2) of the Income Tax Act to broadly define "political activity" as including explicit calls to political action (such as encouraging the public to call on a public official to retain, oppose or change the law, policy or decision of any level of government in Canada or a foreign country) and the creation of an atmosphere which encourages such action. Non-charitable entities, including businesses, face fewer restrictions.

50. The Special Rapporteur sees differential treatment of businesses' and associations' political activity as a form of discrimination against civil society which constitutes a violation of the rights to freedom of association and to take part in public affairs.[72] Moreover, different rules for each sector can lead to disparate access to decision makers, favouring those who are allowed to contribute.

51. The Special Rapporteur favours laws which treat businesses and associations equally when it comes to regulating political contributions and activities, such as in Indonesia[73] (the same rules govern political contributions from each sector), the Republic of Korea[74] (both sectors are prohibited from making political donations) and France[75] (all "legal persons" are prohibited from making political contributions).

C. Audit and reporting requirements

52. States may, in specific circumstances, have a legitimate interest in auditing associations' financial records to ensure their compliance with the law, but that interest does not significantly differ when compared to businesses. The primary

[68] Senegal Civil and Commercial Obligations Code, art. 814.
[69] Revised Parties Registration Proclamation of September 2008, art. 52 (1) (c).
[70] Ibid., art. 51 (1) (b).
[71] See www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html.
[72] International Covenant on Civil and Political Rights, art. 25.
[73] Law No. 42 of 2008 on Presidential and Vice Presidential Elections, arts. 94-96.
[74] Political Funds Act, 2005, art. 31.
[75] French Electoral Code, art. L. 52-8.

distinction between the two entities is their profit motive. If an association receives tax benefits in exchange for registration as a non-profit entity, States have a legitimate interest in ensuring that the association is not generating profits or distributing earnings. Beyond this, there is little rationale for imposing significant differences in audit or reporting processes. Any entity may potentially violate tax laws or engage in financial crime. There is no evidence that either sector poses more risk in this regard.

53. Likewise, there is no basis in international human rights law for imposing more burdensome reporting requirements upon associations than upon businesses. Justifications such as protecting State sovereignty or ensuring aid effectiveness are not legitimate bases under the International Covenant on Civil and Political Rights.[76] Even legitimate State interests, such as protecting national security, should not be used to justify excessive intrusion. Restrictions on the right to freedom of association must be based on individualized and identifiable suspicion, not upon pre-emptive suspicion of an entire sector.

54. Despite this, several States, including Ecuador,[77] enforce audit and reporting regimes for associations that are more complex, costly or intrusive than for businesses. The Canadian Revenue Agency has faced allegations that it is conducting selective and punitive audits of certain charities critical of the Government.[78] These audits have focused on whether the charities have engaged in so-called "political activity", which is limited under the Income Tax Act.[79]

55. In Malaysia, societies are required to provide the Registrar of Societies annually with a detailed list of internal information, including accounts and a description of any money or property received from foreign entities.[80] The audit and reporting requirements for businesses are comparatively light, consisting only of basic annual reports, auditing and minutes of shareholders meetings.[81]

56. In Cambodia, the Law on Associations and Non-governmental Organizations (LANGO), adopted by the National Assembly and Senate in July 2015, permits the Government to conduct an audit or examination of associations "in case[s] of necessity".[82] The authorities have no such power under the Law on Commercial Enterprise governing businesses.[83] Further, LANGO requires all associations to submit annual financial reports to the Government;[84] the Law on Commercial Enterprise only requires this of publicly traded companies.[85]

---

[76] See, e.g., A/HRC/23/29, paras. 39-42 and 27-34.

[77] Associations must facilitate access for government authorities to conduct physical audits, while businesses are not obligated to give regulators physical access to make on-site inspections of their operations, facilities and documentation. Executive Decree No. 16, art. 21 (4 June 2013).

[78] See, e.g., Stephen Harper's CRA: Selective Audits, "Political" Activity, and Right-Leaning Charities, Broadbent Institute, October 2014.

[79] Canada Revenue Agency, available from www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/rght-eng.html; see also www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltcl-ctvts/menu-eng.html.

[80] Societies Act, sect. 14.

[81] See, e.g., Companies Act, sects. 142, 148 and 166 A.

[82] Law on Associations and Non-governmental Organizations, art. 25. See "Cambodia's NGO bill threatens a free and independent civil society — UN expert urges Senate to reject it", 15 July 2015, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16240&LangID=E.

[83] Law on Commercial Enterprise, art. 224.

[84] Law on Associations and Non-governmental Organizations, art. 25.

[85] Law on Commercial Enterprise, art. 228.

57. The Special Rapporteur notes with approval the audit regime in Namibia,[86] which establishes substantially similar requirements for associations and businesses. He considers it best practice to institute simplified auditing and reporting procedures for associations, such as in Nicaragua,[87] which may not have the financial and human resources to comply with more complex financial regulations.

58. The Special Rapporteur also takes note of the adverse effect that donor reporting policies can have upon some associations. A recent study found, for example, that global NGOs spend nearly 80 per cent more to track their finances and employ nearly twice as many finance staff compared to multinational corporations,[88] largely due to restrictions placed on them by funders. While donor policies are not intended to restrict the right to freedom of association, they can have this effect by adding costly burdens. This, in turn, favours large associations, e.g. international NGOs.

D. Other oversight and control

59. States impose a variety of other control and oversight mechanisms which disproportionately target associations. Surveillance of civil society has been a significant issue in recent years, with examples including police infiltration (United Kingdom of Great Britain and Northern Ireland),[89] heightened scrutiny of activists (Canada)[90] and surveillance of NGOs and social movements (Brazil).[91]

60. There is a notable absence of reports of States targeting businesses for surveillance within their own jurisdictions — though some State security agencies have been accused of spying on foreign companies on behalf of domestic businesses. Moreover, spying or hacking that targets businesses is often viewed as a national security threat, with many States utilizing substantial resources to combat it.[92]

61. The Special Rapporteur has highlighted a disturbing trend in Malaysia, where dozens of people have been charged with sedition following their criticism of the Government or its officials.[93] The law has been applied to a range of individuals, including politicians, human rights defenders, academics, lawyers, students and journalists. However only associations — and not businesses — face deregistration if they, as an entity, violate the Sedition Act.[94]

[86] See www.lac.org.na/namlex/Company.pdf and www.pwc.com/na/assets/pdf/business-and-investment-guide-for-namibia.pdf.
[87] See Law No. 147: General Law of Non-profit Legal Entities (1992).
[88] https://hbr.org/2013/04/the-efficiency-trap-of-global/.
[89] See A/HRC/23/39/Add.1, paras. 24-28.
[90] A/HRC/30/27, case CAN 1/2015.
[91] A/HRC/24/21, case BRA 1/2013.
[92] www.ncsc.gov/issues/economic/.
[93] www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=15144&LangID=E.
[94] Societies Act, sect. 13.

62. National security laws may also be misused to protect business interests to the detriment of associations. The Special Rapporteur has received reports that laws in Canada[95] and Indonesia[96] protecting vital national interests are often misused to protect private business interests at the expense of civil society groups exercising their rights to peaceful assembly and association. The Special Rapporteur sees this as symptomatic of a trend towards some States viewing certain business interests as a more compelling "strategic national interest" than the protection of fundamental rights.

63. Similarly, associations and their leaders are often subject to more severe criminal penalties for involvement in "extremist" or terrorist activity. For example, the Criminal Code of Kazakhstan deems being a "leader of a public association" (though not a business) as an aggravating factor leading to greater penalties in a number of crimes.[97] In Turkey, penalties for the offence of terrorist propaganda are doubled if the offence is committed on the premises of an association or foundation.[98]

64. The United States has exhibited harsher treatment of associations for violating the Anti-Terrorism Act, which prohibits "knowingly provid[ing] material support", including funding, to terrorist organizations.[99] In March 2007, Chiquita Brands International was only fined for knowingly making direct payments to terrorists for protection from violence in Colombia,[100] whereas, nine United States charities have been shut down for similar alleged violations since 2001.

65. In some cases, restrictions on human rights can be directly linked to States' efforts to encourage business investment. Businesses then profit from those violations, sometimes calling upon State security organs for further protection. Crimes are often committed on their behalf with impunity. This is particularly true in the field of natural resource exploitation, as the Special Rapporteur documented in his 2015 report to the Human Rights Council.[101] For example, reprisals against activists who stood up to large business interests have occurred in Colombia,[102] the Lao People's Democratic Republic[103] and the Philippines.[104]

66. The Special Rapporteur recognizes the role of trade unions in advocating for a better work environment for employees in the for-profit sector in a climate in which protections are being eroded, ostensibly to increase investment opportunities. He

---

[95] http://canadians.org/blog/rcmp-sees-anti-petroleum-movement-threat.

[96] Presidential Decree (KePres 63/2004) on the Protection of National Vital Objects legitimizes joint military and police operations against any threat to "National vital objects", which include sites, buildings, installations or businesses which concern many people, are of State interest or constitute an important source of revenue for the State.

[97] Criminal Code of Kazakhstan, art. 254.

[98] Article 7 (3) of the Anti-Terror Law; see also GökçeEÇİÇEK AyaTA and UlaŞ KarAN, "Active participation in civil society: international standards, obstacles in national legislation", Recommendations, February 2014, available from www.tusev.org.tr/usrfiles/files/LegalFrameworkReport_website.pdf.

[99] 18 U.S.C. § 2339B.

[100] www.charityandsecurity.org/news/Chiquita_Banana_Fined_Not_Shut_Down_Transactions_Designated_Terrorists.

[101] A/HRC/29/25.

[102] A/HRC/25/74, case COL 11/2013.

[103] A/HRC/23/51, case LAO 3/2012; A/HRC/23/39/Add.2, para. 235.

[104] A/HRC/27/72, case PHL 2/2014.

notes with concern the politically motivated repression of union workers in reprisal for their legitimate work, for example in Bangladesh,[105] Colombia[106] and Guatemala.[107] The right to freely associate includes the right to form and join trade unions, and States retain the primary responsibility for ensuring that improving the business environment does not prevent workers from exercising this right.

V. Freedom to solicit, receive and utilize resources

67. The Special Rapporteur has repeatedly underlined that the ability to seek, secure and use resources — from domestic, foreign and international sources — is essential to the existence and effective operations of any association, no matter how small.[108] Undue restrictions on this ability are a clear violation of the right to freedom of association.[109] Despite this, the Special Rapporteur has found that a number of States impose severe restrictions on associations' ability to access financial, human and material resources, while much more actively promoting business investment activity.

A. Restrictions on the ability to solicit, receive and utilize resources

68. Foreign funding or investment is the type of resource most frequently targeted by State restrictions, both for businesses and associations. The Special Rapporteur has found, however, that trends for businesses and associations are sharply diverging. Undue restrictions on civil society's ability to access foreign funding have grown exponentially in the past decade, while restrictions on foreign investment in businesses are dissipating.

69. India, for example, has long had a reputation of being hostile towards foreign investment in its business sector,[110] but is now encouraging foreign investment in several sectors.[111] Yet the country's Foreign Contribution Regulation Act requires civil society organizations receiving funds from "foreign sources" to receive prior permission or to register under the Act, establishing a de facto permission process for foreign donations.[112]

70. Ethiopia prohibits domestic NGOs working in certain rights-based areas from receiving more than 10 per cent of their funding from foreign sources.[113] Restrictions on foreign investment for businesses are far less burdensome, perhaps

[105] A/HRC/28/85, case BGD 6/2014.
[106] A/HRC/29/50, case COL 11/2014; A/HRC/28/85, case COL 6/2014; and A/HRC/29/25/Add.3, para. 125.
[107] E/C.12/GTM/CO/3, para. 16.
[108] A/HRC/23/39, para. 8.
[109] Ibid., paras. 15-18.
[110] Swapna S. Sinha, *Comparative Analysis of FDI in China and India: Can Laggards Learn from Leaders?* (Boca Raton, Florida, United States, Dissertation.com, 2008), p. 67.
[111] http://www.mondaq.com/india/x/256108/international+trade+investment/Liberalization+Of+Foreign+Direct+Investment+Limits+In+12+Sectors.
[112] Foreign Contribution (Regulation) Act, No. 42 of 2010, chap. III, sect. 11, para. 2.
[113] Charities and Societies Proclamation, para. 2 (2), Federal Gazette No. 25, 13 February 2009. See A/HRC/20/27/Add.3, para. 116, case ETH 6/2011.

best illustrated by the fact that Ethiopia has seen an astonishing 1,500 per cent increase in foreign direct investment in the past seven years.[114]

71. The Russian Federation requires associations receiving foreign funds and engaging in vaguely defined "political activity" to register as "foreign agents", which carries the connotation that they are spies.[115] Yet as recently as 2013, one United Nations study ranked the Russian Federation as the world's third most successful country in attracting foreign capital.[116]

72. Egypt has also severely limited associations' ability to accept foreign funding banning its receipt without government permission.[117] The failure to secure prior approval may lead to dissolution and criminal penalties, including imprisonment. In 2012 alone, the Government brought charges against more than 40 Egyptian and foreign NGO employees for the use of foreign funds in NGOs without prior approval.[118] By contrast, Egypt recently instituted a wave of reforms aimed at increasing commercial foreign investment,[119] for example by signing bilateral conventions with more than one hundred countries to provide protection and privileges for foreign investors.[120]

73. Some States also impose general restrictions that affect associations' ability to access domestic resources. Azerbaijan, for example, prohibits anonymous donations, no matter how small,[121] creating the absurd situation where associations cannot accept a contribution of spare change in a donation box without documenting the donor's identity.

74. The ability to access resources is inherent to the right to freedom of association, and any restrictions imposed must be necessary and proportional.[122] The restrictions cited above fail to meet this test and their failure to do so is even more glaring when viewed beside the comparatively liberal rules governing business investment in the same States.

75. On the other end of the spectrum, Jamaica[123] and Nicaragua[124] both have relatively open rules on access to resources, which appear to apply evenly to businesses and associations. The Special Rapporteur believes this is the standard that States should aim for, as he sees no legal basis to distinguish sharply between the two sectors in this regard.

---

[114] www.ft.com/intl/cms/s/0/0faa1dac-ea88-11e4-a701-00144feab7de.html#axzz3YcvbNqX1.

[115] See A/HRC/23/39/Add.2, para. 342, case RUS 5/2012.

[116] Global Investment Trade Monitor, No. 15, available from http://unctad.org/en/PublicationsLibrary/webdiaeia2014d1_en.pdf.

[117] Law on Non-Governmental Organizations, art. 17 and Executive Statute of the Law on Non-Governmental Organizations, art. 62.

[118] International Center for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society*, 2nd ed., June 2012, available from www.defendingcivilsociety.org/dl/reports/DCS_Report_Second_Edition_English.pdf.

[119] http://www.wsj.com/articles/egypt-draws-foreign-investment-as-economic-reforms-kick-in-1426153329.

[120] UNCTAD, *International Investment Agreements Navigator*, available from http://investmentpolicyhub.unctad.org/IIA.

[121] www.icnl.org/research/monitor/azerbaijan.html.

[122] A/HRC/23/39, para. 19; Human Rights Committee, general comment No. 31, para. 6.

[123] LexMundi World Ready, Guide to Doing Business: Jamaica, available at www.lexmundi.com/lexmundi/Guides_To_Doing_Business.asp.

[124] *Ley No. 344 de Promoción de Inversiones Extranjeras* and *Reglamento de La Ley No. 344*.

B. Counter-terrorism and anti-money-laundering measures

76. The Special Rapporteur has emphasized that States, in seeking to combat and prevent terrorism, should avoid imposing disproportionate requirements on associations as compared to businesses,[125] since there is little evidence that associations are more prone to be used for terrorist financing than other legal entities.[126] Yet, compared to the business sector, associations' ability to seek, receive and utilize resources is often limited under the justification of countering terrorism.

77. Pursuant to its National Action Plan[127] on combating terrorism, the Government of Pakistan has subjected not-for-profit companies registered under section 42 of the Companies Ordinance[128] for five years to a licence revalidation/renewal process to ensure they are not engaged in terrorist financing. This process includes confirming that income and profits are applied solely towards the promotion of the objects for which the association was formed.[129] The licence renewal process requires non-profit companies (considered NGOs in Pakistan) to include details of local and foreign donations and grants received during the previous five years, as well as an affidavit by the director and chief executives affirming that they are not associated with money-laundering and terrorist financing.[130] As a result of this review hundreds of non-profit companies have lost their licences.[131] No similar circulars or orders appear to target for-profit companies and, to the Special Rapporteur's knowledge, for-profit companies do not appear to have received similar scrutiny under the National Action Plan.

78. In Kosovo, the Law on the Prevention of Money Laundering and Terrorist Financing applies to businesses and associations, but imposes additional requirements on the latter. Specifically, associations are not allowed to receive or disburse payments of more than 1,000 euros from a single source or 5,000 euros to a single recipient in a single day.[132] Failure to respect those restrictions is a criminal offence punishable by imprisonment for up to two years.

C. Facilitation of each sector's ability to solicit, receive and utilize resources

79. States' positive obligation to establish and maintain an enabling environment for associations extends to fostering the ability to solicit, receive and utilize resources. Some States do this by extending tax privileges to associations registered as non-profit entities. Such privileges may include exemption from income tax (for the recipient association and the donor), such as in Bulgaria and Lithuania,[133] or from other taxes.

---

[125] A/HRC/23/39, para. 23.

[126] www.statewatch.org/analyses/no-171-fafp-report.pdf.

[127] http://cpakgulf.org/2015/01/the-national-action-plan-an-over-view/.

[128] www.bu.edu/bucflp/files/2012/01/Companies-Ordinance-of-1984.pdf.

[129] Securities and Exchange Commission of Pakistan Circular No. 02/2015, available from www.secp.gov.pk/circulars/pdf/Cir_2015/Cir02_LicensesRenewalSec42.pdf.

[130] www.secp.gov.pk/circulars/pdf/Cir_2015/Cir04_LicenseRenewal.pdf.

[131] www.dawn.com/news/1193504.

[132] Republic of Kosovo, Law No. 03/L-196 on the Prevention of Money-laundering and Terrorist Financing, art. 24.

[133] A/HRC/20/27, para. 72.

80. The Special Rapporteur believes that providing such benefits is not simply a matter of good human rights policy; there is also a strong rational and economic basis for providing tax benefits to associations. Non-profit organizations can complement a government's efforts to serve the public and benefit society. They also provide a vehicle for individuals to come together in pursuit of common interests, thus promoting pluralism and democracy. Associations are situated outside of the profit-seeking paradigm so central to today's world which allows them to approach problems from a different perspective and increase the pool of policy ideas and solutions.

81. In this regard, the Special Rapporteur cites Australia,[134] Jamaica,[135] Switzerland[136] and the United States[137] as examples of good practice. Each of those States exempts the revenue of certain associations from income tax, and in the case of the United States[138] donors are allowed to deduct donations from their income. Those privileges foster associations' ability to seek, secure and use resources and to do their work more effectively.

82. The Special Rapporteur nevertheless is mindful that, despite positive measures like tax exemptions, smaller associations have found it increasingly difficult to operate as more governments cut budgets for international cooperation and shift their priorities to "aid for trade", in which businesses are seen as an important partner.[139]

83. He also cautions against using tax benefits as leverage to control or excessively monitor civil society organizations. The process of qualifying for such privileges should be simple, transparent and impartial. The acceptance of incentives should not put associations in a vulnerable position. Moreover, tax breaks should not be bestowed on the basis of the government's judgement of an organization's goals or purpose, as long as that purpose is legal under international law.

84. The Special Rapporteur also notes that tax incentives are not unique to the non-profit sector. Many States offer significant incentives to businesses, such as special economic zones,[140] tax holidays,[141] tax exemptions for business expenses,[142] free trade areas,[143] special loans,[144] taxpayer-funded bailouts[145] and more. Many of these benefits are distributed without significant administrative burdens. Nor are

[134] Income Tax Assessment Act 1936.

[135] Income Tax Act (1955), paragraph 12 (h), http://www.jamaicalawonline.com/revised-laws/statutes/240-income-tax-act.html (amended 2009).

[136] Swiss Civil Code of 10 December 1907, art. 86 (2).

[137] 26 U.S. Code § 501 (c) (1-4) (1913).

[138] 26 U.S. Code § 501 (c) (3) (1913).

[139] Response to the Special Rapporteur's questionnaire from Women Peacemaker Programme, 2015.

[140] *Ordonnance n° 2012-487 du 7 juin 2012 portant code des investissements* (Côte d'Ivoire).

[141] Investments Code (Senegal), art. 18 (suspends customs duties, VAT and other taxes for three years for qualifying new enterprises).

[142] The United States allows businesses to deduct all "ordinary and necessary expenses" from income, including salaries, travel expenses, rental fees, insurance costs and more; 26 U.S. Code § 162.

[143] Honduras has established free trade zones for business where corporations enjoy a range of tax exemptions and other benefits. See http://zede.gob.hn/wp-content/uploads/2013/10/leyzede.pdf.

[144] South Africa offers over 18 grants and incentives to businesses in specific industries; there is no equivalent of this in the civil society sector (response to the Special Rapporteur's questionnaire by Legal Resource Centre, 2015).

[145] See, e.g., the Emergency Economic Stabilization Act of 2008 (United States) and the Banking (Special Provisions) Act 2008 (United Kingdom).

they used as justification for excessive interference in the internal affairs of a business. Indeed, some of them are meant to relieve companies of what many in the business community characterize as excessive State control.

85. The Special Rapporteur believes the same principle of minimal intervention should apply when tax and other incentives are granted to associations. He therefore rejects the argument that the receipt of tax incentives means that associations should be subject to significantly stricter financial and operational controls.

VI. Influence with power

86. Businesses' relationship with the government in many States can be described as "cosy" and is often characterized by privileged access and treatment. It is not uncommon for politicians to be former businesspeople and vice versa[146] or to have close, even family, ties to the business sector.[147] Even those without extensive personal experience in commerce undoubtedly rely to some extent on the support of the business community.

87. Indeed, governments commonly view business as a natural ally of power: its activity stimulates the economy and creates jobs, which enables governments to advance their agendas and helps stabilize political situations. This relationship is, in turn, used to justify certain benefits provided to the business sector, such as tax incentives (though, notably, civil society's significant role in and contribution to economic growth and job creation is often overlooked). Business values are also by definition firmly centred on profit-making, potentially making the sector more politically malleable. Business leaders in some States may see their position as being dependent on power, which makes them cautious about questioning the established order. Businesses also have more resources than associations to lobby governments.[148]

88. Some associations, on the other hand, often centre their role on speaking truth to power, which makes their relationship with governments potentially more antagonistic, although not always. To some extent the power and influence imbalance can depend on an entity's size, sectoral influence and available financial resources. Bigger and richer organizations tend to have more access and influence, whether they are in the for-profit or non-profit sector. Labour unions also may have better access to decision-making processes, particularly in relation to workers' rights and where tripartite mechanisms exist.[149] On the other end of the spectrum, informal community-based structures may have great difficulty in participating in decision-making processes. A striking example is the "Majakaneng Water Crisis Committee" in South Africa which, despite its many attempts to intervene in high-level meetings between provincial and municipal structures, was not granted access

[146] www.globalresearch.ca/business-and-politics-in-the-european-union-institutionalised-corruption-and-the-revolving-door/5372760.

[147] For example, four of the seven prime ministers of Georgia in the period 2004-2012 either joined the government from the private sector or moved to the private sector after their resignation, or both. See transparency.ge/en/node/2744.

[148] Corporate lobbyists held 3,191 official meetings with European Union officials between December 2014 and June 2015; NGOs held only 766. See www.integritywatch.eu/.

[149] Response to the Special Rapporteur's questionnaire by Bulgarian NGOs, 2015.

or allowed copies of relevant documentation in relation to ongoing water problems in the Majakaneng community.[150]

89. The importance of business to governments is often evidenced by their extensive integration into ministries that do not strictly focus on commerce. "Trade" is incorporated in the name of ministries of foreign affairs in a growing list of countries, including Australia,[151] Canada,[152] Hungary,[153] Ireland[154] and New Zealand[155] — suggesting increased business influence on foreign policy. Conversely, associations are sometimes regulated by the same ministry that oversees prisons or the police.[156]

90. In Kenya, as in many other countries, the President meets annually with business leaders,[157] while no similar meeting is afforded to civil society. In fact, presidents rarely, if ever, attend global conferences discussing civil society's concerns, such as the International Civil Society Week organized by CIVICUS. They are much more likely to attend conferences on business promotion, such as the World Economic Forum or the Global Entrepreneurship Summit.

91. States often dedicate significant resources to helping their nationals conduct business abroad. For example, the United States Department of State, via its embassies abroad, offers "problem-solving assistance to United States companies" and "dialogue with the United States private sector to ensure that business concerns are factored into foreign policy".[158] The Special Rapporteur is not aware of similar services offered for associational activities. Canada has been criticized by civil society for using its Department of Foreign Affairs, Trade and Development to promote the interests of Canadian companies abroad at the expense of human rights.[159]

92. In the multilateral arena, the World Bank publishes its annual *Doing Business* report, a massive undertaking that provides "objective measures of business regulations for local firms in 189 economies and selected cities at the subnational level".[160] This informative and detailed report is seen as essential reading for foreign investors, yet no multilateral agency produces a similar report for associations.[161]

93. Businesses may also have privileged access to law-making procedures and trade treaty negotiations.[162] Negotiations for the multilateral Anti-Counterfeiting

[150] Response to the Special Rapporteur's questionnaire by Legal Resource Centre, 2015.
[151] http://dfat.gov.au/pages/default.aspx.
[152] www.international.gc.ca/international/index.aspx?lang=eng.
[153] www.kormany.hu/en/ministry-of-foreign-affairs-and-trade.
[154] www.dfa.ie/.
[155] www.mfat.govt.nz/.
[156] For example, in Cambodia (www.icnl.org/research/monitor/cambodia.html) and Pakistan (www.icnl.org/research/monitor/pakistan.html).
[157] www.president.go.ke/2015/04/02/speech-by-h-e-uhuru-kenyatta-during-the-presidential-roundtable-at-state-house-nairobi-on-2nd-june-2015/.
[158] www.state.gov/e/eb/cba/faq/176.htm.
[159] www.amnesty.ca/sites/default/files/canadahrareport18december13.pdf.
[160] www.doingbusiness.org/.
[161] The Special Rapporteur is appreciative of private efforts to create a similar index for civil society, however, such as the Hudson Institute's Index of Philanthropic Freedom (http://hudson.org/research/11259-the-interactive-map-of-philanthropic-freedom) and the CIVICUS Enabling Environment Index (http://civicus.org/eei/).
[162] See www.sanders.senate.gov/download/the-trans-pacific-trade-tpp-agreement-must-be-defeated?inline=file.

Trade Agreement, for example, were allegedly conducted in secret, but an advisory committee of large United States-based multinational corporations was consulted on a draft of the agreement.[163]

94. Privileged access for business also extends to multilateral decision-making bodies, where for-profit entities are often favoured. The Special Rapporteur has noted previously that the business community, particularly large corporate interests, are playing an increasingly dominant role at the multilateral level compared to civil society, including in the post-2015 development agenda processes.[164]

95. As a corollary, the Special Rapporteur notes the relative lack of focus on human rights, including the rights to assembly and association, in bilateral and multilateral treaties in general, and trade treaties in particular. It may be particularly relevant to address the rights to assembly and association in trade treaties, given the potential impact of those treaties upon workers and trade unions. Some States object to the inclusion of human rights conditions in trade treaties, arguing that this infringes on their sovereignty. Yet States ignore this justification when the same treaties require wholesale changes to the business regulatory environment at the behest of other States and corporate interests.

VII. Conducting peaceful assemblies

96. The right to freedom of peaceful assembly is sometimes misconstrued as relating only to protests and other public expressions of collective political activity. However, the right also protects private and non-political public gatherings. Associations and businesses may organize and hold gatherings for a variety of objectives, commercial and non-commercial, including meeting members, beneficiaries, clients, donors or investors as part of their internal governance obligations or in the course of their operations; assemblies for expressive purposes; and marketing or public relations. States have an obligation under international law to facilitate peaceful assemblies, yet they can treat assemblies in very different ways, sometimes without an objective or legal basis to do so.

97. To the Special Rapporteur's knowledge, legislation in many countries does not generally distinguish participants in peaceful assemblies on the basis of their for-profit or non-profit objectives. Thus, for example, Bulgarian law recognizes that individuals, associations, and political and other social organizations can organize assemblies.[165] The law in Portugal requires both individuals and legal entities wishing to assemble peacefully to notify the relevant authorities at least two working days prior to the event.[166]

[163] www.keionline.org/blogs/2009/03/13/who-are-cleared-advisors. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E.

[164] A/69/365, para. 12; see also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15970&LangID=E.

[165] Bulgarian Law on Gatherings, Meetings and Manifestations (1990), art. 2.

[166] *Decreto-Lei No. 406/74, de 29 de Agosto*, as amended by *Lei Orgânica No. 1/2011, de 30 de Novembro*, art. 2 (1).

98. Maldives, however, excludes certain activities from the ambit of the law, namely business, sports and cultural activities, even while affirming the right to freedom of peaceful assembly for individuals and legal entities.[167]

99. Despite the neutrality of most laws, assemblies by civil society organizations are more likely to be restricted in practice than those held by businesses. This can be largely explained by the deference afforded by States to economic considerations over other interests. Additionally, civil society gatherings are more likely to be organized to challenge power.

100. Differential treatment of assemblies takes various forms. The authorities may deny permission, licences or other facilitation for demonstrations and protests, especially those held in opposition to major corporate-sponsored events. A glaring example is the crackdown by Azerbaijan on human rights activists protesting the European Games, which were largely sponsored by corporate entities.[168] The Special Rapporteur previously cited with concern the case of protestors who staged a sit-in at the department store Fortnum & Mason, in London. The demonstrators did not prevent customers from shopping, yet 138 were arrested and charged with aggravated trespass; 29 were prosecuted.[169]

101. Similarly, the authorities may interfere with meetings or events convened by civil society organizations, including internal meetings held at private venues. In Rwanda, for example, the authorities reportedly prevented the Rwandan League for the Promotion and Defence of Human Rights from holding a general assembly.[170] There is no evidence that private business entities, for example when holding shareholders' meetings, face similar restrictions, in Rwanda or elsewhere. Similarly, in Cambodia,[171] attendees at the 2012 ASEAN Peoples' Forum in Phnom Penh reported being turned away from hotels en masse after State security agents pressured the owners; however, no similar problems were reported for the country's International Investment Conference in 2014, which the Prime Minister himself formally opened.[172]

102. The Organization for Security and Cooperation in Europe-Venice Commission Guidelines on Freedom of Peaceful Assembly affirm that "assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic".[173] This principle should be taken into account in weighing restrictions on assemblies. Yet, in the Special Rapporteur's experience, the authorities are more likely to restrict protests and demonstrations (expressive gatherings more often organized by associations) for reasons of the disruption of traffic and commercial activity and the protection of property, than commercial events that cause similar disruption. Concerns have been raised about the implementation of a crowd-control policy in the city of Oakland, United States, where law enforcement officials reportedly restrict night-time protests, purportedly

[167] Freedom of Peaceful Assembly Act of Maldives, Act 1/2013.
[168] www.un.org/apps/news/story.asp?NewsID=51034# VaaK1vlVikp.
[169] A/HRC/23/39/Add.1, para. 9.
[170] A/HRC/29/50, case RWA 2/2014; A/HRC/26/29/Add.2, para. 30; see also E/CN.4/2005/101/Add.1, paras. 467 and 468.
[171] A/HRC/21/49, case KHM 3/2012.
[172] www.ibccambodia.com/eng/event_20141006.php.
[173] See guideline 3.2.

to prevent violence and protect property from vandalism.[174] By contrast, a parade to celebrate a sports team victory received considerably more accommodation from the Oakland authorities.[175]

103. Similarly many States afford more protection to corporations engaged in natural resource exploitation than to groups peacefully protesting their activities. The shooting to death of over 30 miners in South Africa by police during a workers' strike is an egregious example of such preferential treatment.[176] Individuals and communities opposed to natural resource exploitation activities are labelled as "anti-development" and "enemies of the State" and portrayed as undermining States' efforts to promote economic growth and development. Their activities are criminalized and their claims disregarded, while corporations continue exploitation activities.[177]

104. The Special Rapporteur reiterates the legitimacy of expressive assemblies held by civil society organizations vis-à-vis corporate events, interests or property. A proper balancing of competing interests should be informed by objective criteria in accordance with international law.

VIII. Conclusions and recommendations

105. **The Special Rapporteur has observed stark and significant differences in the treatment of businesses and of associations, particularly with regard to the respective environments in which they operate. States often go to great lengths to create the best possible environment for commercial activities. They rarely go so far for associations.**

106. **He believes that these differences are motivated more by politics than practicality. Economic and commercial interests are prized over what are perceived as non-economic activities. Consequently, the influence and opinions of industry take precedence in State policy over social justice and fundamental rights. This approach ignores the fact that a vibrant civil society is essential for sustainable economic development, and that businesses benefit from an empowered civil society sector.**

107. **Sectoral equity is not a difficult concept to adopt. It is simply a matter of political will. The Special Rapporteur is optimistic that States can change their perception of sectoral equity, primarily because businesses and associations have a strong convergence of interests. For both sectors, the rule of law is preferable to the rule of power. Predictability trumps disorder. Fairness is better than corruption. Stable, balanced environments are better for all sectors, whether they be multinational corporations, grass-roots activist groups or major international NGOs.**

108. **In this spirit, the Special Rapporteur calls upon States, multilateral organizations, businesses and other stakeholders to commit themselves to the**

[174] www.aclunc.org/blog/aclu-oakland-protest-curfew-let-people-march; see also www.aclunc.org/blog/aclu-responds-excessive-force-used-protesters.

[175] http://espn.go.com/nba/playoffs/2015/story/_/id/13115607/golden-state-warriors-parade-celebrate-nba-title.

[176] A/HRC/22/67 and Corrs.1 and 2, case ZAF 3/2012.

[177] A/HRC/29/25, paras. 42-47

concept of sectoral equity and to create the best possible enabling environment for the existence and operation of associations, and the holding of peaceful assemblies by civil society. The Special Rapporteur proposes the following recommendations as steps towards realizing these goals.

States

109. **The Special Rapporteur calls upon States:**

(a) **To ensure that businesses and associations are treated equitably by laws and practices regulating, inter alia, registration, dissolution, taxes, political activity and contributions, auditing and reporting, access to resources, including foreign financial resources, and peaceful assembly;**

(b) **To take positive measures to protect and facilitate the right to freedom of association, including by reducing accounting and oversight burdens for smaller associations, offering tax incentives for associations, creating "one-stop shops" and offering diplomatic assistance abroad for those in the civil society sector;**

(c) **To take positive measures to protect and facilitate the right to freedom of peaceful assembly, including by requiring at most a prior notification procedure, while allowing spontaneous assemblies, and ensuring access to public space, including public streets, roads and squares, for the holding of peaceful assemblies;**

(d) **To take proactive measures to increase civil society's access to power and participation in high-level decision-making processes, including during the consideration of new legislation and treaties, and particularly for social movements and grass-roots associations;**

(e) **To ensure that trade treaties incorporate respect for fundamental human rights, including the rights to freedom of peaceful assembly and of association, and particularly as these rights apply to trade unions;**

(f) **To treat the enjoyment of fundamental human rights, including to freedom of peaceful assembly and of association, as a national strategic interest warranting broadly the same attention, efforts and financing as other strategic national interests, such as national defence;**

(g) **To initiate and welcome regular dialogue and engagement with civil society to discuss issues of concern to them.**

United Nations, other multilateral organizations and donors

110. **The Special Rapporteur calls upon the United Nations, other multilateral organizations and donors specifically:**

(a) **To consider the concept of "sectoral equity" as critical to the enjoyment of the rights to freedom of peaceful assembly and of association, and enshrine that perspective in instruments designed to promote and protect fundamental rights;**

(b) For donors to ensure that organizational policies, particularly reporting requirements, do not impose excessive administrative and reporting burdens upon recipient associations, particularly small organizations;

(c) To use bilateral aid as leverage to encourage States to support the rights to freedom of peaceful assembly and of association, and evaluate the health of those rights, in part by examining whether civil society is treated equitably compared to businesses;

(d) To commission further research on the subject of sectoral equity, so that unjustifiable inequitable treatment can continue to be identified, analysed and reduced.

Businesses and civil society

111. **The Special Rapporteur calls upon businesses and civil society:**

(a) To recognize the broad convergence of their interests in the areas of government transparency and the rule of law, and elsewhere, and increase partnerships so that both sectors can work together towards those common goals;

(b) For civil society, to consider the principle of sectoral equity when analysing and reporting on violations of the rights to freedom of peaceful assembly and of association.